

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

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NO. 77-719

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**JEROME D. CHAPMAN, COMMISSIONER OF
THE TEXAS DEPARTMENT OF HUMAN
RESOURCES, ET AL.,**

Petitioners

v.

**HOUSTON WELFARE RIGHTS
ORGANIZATION, ET AL.,**

Respondents

* * *

**BRIEF OF AMICUS CURIAE STATE OF HAWAII
IN SUPPORT OF PETITIONERS' BRIEF
ON THE MERITS**

* * *

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TO THE HONORABLE SUPREME COURT OF THE
UNITED STATES:

The State of Hawaii (hereinafter "Hawaii") respectfully submits this brief *amicus curiae*, pursuant to Supreme Court Rule 42 through its Attorney General, Ronald Y. Amemiya, by counsel of record, Michael A. Lilly.

INTEREST OF AMICUS

Hawaii participates in all of the public assistance programs for which Federal funds are made available under the

Social Security Act (hereinafter "Act"), as amended, 42 U.S.C. § 601, *et seq.*¹ Like Petitioners (hereinafter "Texas") and the 51 other jurisdictions receiving such funds to strengthen and improve their Aid To Families With Dependent Children (hereinafter "AFDC") programs, Hawaii, in compliance with the Act and implementing Federal regulations, has submitted and received the approval of the Secretary of Health, Education and Welfare for its State plan. Included in that plan are provisions for determining who are eligible for AFDC assistance and the amount of assistance they are entitled to receive.

One-half of the approximately \$6,858,000 necessary to provide assistance to Hawaii's 18,258 AFDC cases in the month of March 1978, came from Federal funds available under the Act. In the Fiscal Year 1976-1977, \$73,901,426 were spent to provide AFDC assistance to 17,020 cases; by the close of the current fiscal year, approximately \$82,253,578 will have been used to provide assistance to a monthly average caseload of 18,175.

As a full participant in all of the Act's public assistance programs, Hawaii has a keen interest in settling both the substantive and jurisdictional questions raised by Texas' request for this Court's review by *certiorari*.

The substantive issues raised by Texas are particularly timely. Hawaii's own flat granted AFDC standard for shelter and utilities is being challenged in the United States District Court for the District of Hawaii *vis-a-vis* 42 U.S.C. § 602(a)(23).² Although the claim of improper proration is not raised in the action against Hawaii, the question as to whether it is ever proper under 42 U.S.C. § 602(a)(23) to lower the standard of assistance is the key issue.

Resolution of the jurisdictional dispute is also of extreme importance to Hawaii. The State of Hawaii has urged the United States District Court for the District of Hawaii to

¹These programs include the Aid To Families With Dependent Children (Title IV), Supplemental Security Income (Title XVI), Medicaid (Title XIX), and Social Services (Title XX).

²*Tupua, et al. v. Chang, et al.*, Civil No. 75-0404 (D. Hawaii).

adopt the position of the United States Courts of Appeals for the First, Second, and Third Circuits, namely, that Federal jurisdiction for challenges to state implementation of welfare programs established under the Act is cognizable under 28 U.S.C. § 1331 and not 28 U.S.C. § 1343.

In the last several years suits challenging Hawaii's system for providing public assistance to needy persons have consistently alleged that non-compliance with Federal statutory and regulatory welfare program provisions constitutes a violation of the Supremacy Clause of the United States Constitution. In some instances, suits have appended thereto the allegation that such non-compliance also constitutes or results in violations of the respective plaintiff's or plaintiff-class' rights under either or both the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. Jurisdiction in these cases has been predicated upon 28 U.S.C. §§ 1331 and 1343, or only § 1343.

In disposing of the jurisdictional issue, the Hawaii District Court has ruled that jurisdiction is properly conferred upon it under 28 U.S.C. § 1343, without discussing whether the plaintiff or plaintiff-class has raised a colorable constitutional claim. The actions have been characterized as "1983 actions," notwithstanding the fact that the District Court has, in most cases, not reached the claims premised on the Fourteenth Amendment; rather, it has confined itself to hearing and deciding only the issues arising under the Supremacy Clause.

Hawaii is gravely concerned about the jurisdictional holding of this line of cases. As a participating state, open to public scrutiny of its methods of implementing the Act, Hawaii can only anticipate that the jurisdictional controversy will continue to plague future cases in the District Court. If, however, the jurisdictional issue is resolved here, the need to waste valuable judicial time pointing out the difference between the opinion of the Hawaii District Court and the opinions of the First, Second, and Third Circuits will be obviated.

There is also an urgent need for Supreme Court discussion of whether mere allegations of Fourteenth Amendment claims, particularly in the area of challenges to state welfare programs premised on violation of the Supremacy Clause wherein resolution without discussion of the equal protection or due process claims provides full relief to the plaintiff, constitute a substantial constitutional claim for purposes of conferring 42 U.S.C. § 1343 jurisdiction on the Federal courts.

ARGUMENT

Texas has presented three questions for review by this Court. The State of Hawaii specifically incorporates herein and joins with Texas in each of its arguments urging this Court to find that the District and Circuit Courts lacked jurisdiction to entertain Respondents' claims under 28 U.S.C. § 1343, and that the Court of Appeals erred and improperly intruded into a state's right to establish a standard of need for determining eligibility for the AFDC program it is charged with administering under the Social Security Act.

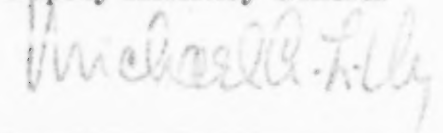
CONCLUSION

Having considered the arguments set forth in Texas' Brief on the Merits, as well as the particular and joint concerns of Hawaii, as *amicus curiae*, this Court should rule that the claims raised by Respondents do not rise to the level necessary to authorize enforcement in Federal court pursuant to 28 U.S.C. § 1343.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, MICHAEL A. LILLY, Deputy Attorney General of Hawaii and a member of the Bar of the Supreme Court, do hereby certify that three copies of the foregoing Brief for Amicus Curiae, State of Hawaii, have been served on Petitioners and Respondents by placing same in the United States Mail, certified postage prepaid, addressed respectively as follows: Mr. David H. Young, Assistant Attorney General, State of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711, Petitioners; Mr. Jeffrey J. Skarda, 2912 Luell Street, Houston, Texas 77093 and Mr. John Williamson, Texas Rural Legal Aid, 305 E. Jackson Street, Suite 122, Harlingen, Texas 78550, Respondents, on this 2 day of June, 1978.



MICHAEL A. LILLY
Deputy Attorney General
State of Hawaii

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